

July 22, 2004

Docket No. TSA-2003-14610

State Points of Contact for Hazardous Materials Endorsements
on Commercial Drivers Licenses

RE: Exemption from Notification Requirement in 49 CFR 1572.5(c)(2)(ii)

Pursuant to its authority at 49 U.S.C. 114(r) to grant an exemption from regulations, The Transportation Security Administration (TSA) is granting to the States an exemption from the notification requirement contained at 49 Code of Federal Regulations (CFR) 1572.5(c)(2)(ii). That provision requires States to notify each commercial driver in the State with a hazardous materials endorsement (HME) for a commercial drivers license (CDL) that he or she will be subject to a TSA security threat assessment. The States are required to notify such drivers at least 180 days prior to the expiration date of the driver's HME. TSA is granting to the States an exemption from this provision, effective immediately, because TSA has determined that 60 days prior notice to drivers would be effective, and it would be an undue burden on States to provide 180 days prior notice to drivers.

Background

On May 5, 2003, TSA published an interim final rule (May 5 IFR) that requires a security threat assessment of commercial drivers who are authorized to transport hazardous materials in commerce. (68 FR 23852, May 5, 2003). The May 5 IFR implements statutory mandates under The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act (Pub. L. 107-56, October 25, 2001, 115 Stat. 272) and the Safe Explosives Act (SEA). (Pub. L. 107-296, November 25, 2002, 116 Stat. 2280). The May 5 IFR established security threat assessment standards for determining whether a driver poses a security threat warranting denial of an HME, and contained several requirements for States that issue an HME, including the requirement at paragraph 1572.5(c)(2)(ii) that States notify each commercial driver in the State with an HME, at least 180 days prior to the expiration date of the driver's HME, that he or she will be subject to a TSA security threat assessment. The May 5 IFR required States to be in compliance no later than November 3, 2003.

TSA requested and received comments from the States, labor organizations, and representatives of the trucking industry. In addition, TSA held working group sessions with the States to discuss potential fingerprinting systems that would achieve the statutory requirements, but would not adversely impact the States. Based on the comments received and our working sessions with the States, TSA issued a technical

amendment in November 2003 to extend the date on which States were required to comply with the provisions of the May 5 IFR. (68 FR 63033, November 7, 2003). TSA took this action because a majority of the States indicated that they could not comply by November, and TSA did not have authority to collect fees to cover TSA's implementation costs. This technical amendment required the States to be in compliance with the May 5 IFR by April 1, 2004 or request an extension of time and produce a compliance plan by April 1, 2004. All States were required to be in compliance by December 1, 2004.

In response to the November 2003 technical amendment, a majority of the States asked for an extension of time because they could not begin collecting applicant information or fingerprints by April 1, 2004. Therefore, on April 6, 2004, TSA published a final rule removing the April 1 date and establishing January 31, 2005 as the date on which States must be in compliance with the May 5 IFR. (69 FR 17696, April 6, 2004).

Exemption

Under 49 U.S.C. 114(r), TSA may grant an exemption from a regulation prescribed in carrying out the agency's duties if the agency determines that the exemption is in the public interest.

As noted above, paragraph 1572.5(c)(2)(ii) of the May 5 IFR requires States to notify each commercial driver in the State with an HME, at least 180 days prior to the expiration date of the driver's HME, that he or she will be subject to a TSA security threat assessment. For States to be in compliance with that provision on January 31, 2005, they must begin notifying drivers in late July/early August 2004. After further consideration, TSA has determined that 60 days prior notice to drivers would be effective, and it would be an undue burden on States to notify drivers now. For these reasons, TSA believes that granting the States an exemption from paragraph 1572.5(c)(2)(ii) of the May 5 IFR would be in the public interest.

Accordingly, TSA is granting the States an exemption from 49 CFR 1572.5(c)(2)(ii). This exemption is subject to the following conditions and limitations:

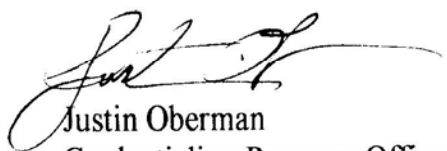
1. Each State must notify each individual holding an HME for a CDL issued by that State that the individual will be subject to the security threat assessment described in 49 CFR Part 1572, at least 60 days prior to the expiration date of the individual's HME.
2. The notice must inform the individual that the individual may initiate the security threat assessment any time after receiving the notice, but no later than 30 days before the expiration date of the individual's HME.
3. TSA currently is developing guidance documents that will provide States with the information they will need to include in the notification to drivers

whose HME must be renewed. States must comply with those guidance documents when they are issued.

4. This exemption will terminate on the effective date of any revision to 49 CFR 1572.5(c)(2)(ii) that TSA publishes.

If you have any questions regarding this exemption, please contact George Petersen, Credentialing Program Office, Transportation Security Administration HQ, East Building, 601 South 12th Street, Arlington, VA 22202-4220; telephone (571) 227-2215; e-mail George.Petersen@dhs.gov.

Sincerely,



Justin Oberman
Credentialing Program Office